area comprising the Malay Peninsula and the islands which form a part of it, including the island of Singapore or it refers to the two political entities consisting of the States of the Federation and Singapore.

It is contended on behalf of the respondent that, 'Malaya' in the Employees Provident Fund Ordinance means the States of the Federation and Singapore, and therefore by virtue of the provisions of section 73(1) and 73(4) of the Malaysia Act, 'Malaya' must mean the States of West and East Malaysia and Singapore. The fallacy in this argument, stems, in my opinion, from a misconception of what is the final definition of 'Malaya' under the Interpretation and General Clauses Ordinance. The definition of 'Malaya' in the Interpretation and General Ordinance is not complete without reference to the definition of the expression "the States of the Federation". If both definitions are taken together the final definition which emerges is something more specific. If I were to re-write section 13(1)(d) of the Employees Provident Fund Ordinance in accordance with the meaning of 'Malaya' as it finally turns out to be, I would re-write it as follows:—

"(d) The member of the fund is about to leave the States of Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor, Trengganu, Malacca, Penang and all dependencies, islands and places which on Merdeka Day were administered as part thereof, and the territorial waters adjacent thereto and the Island of Singapore."

If this definition is read into section 13(1)(d) of the Employees Provident Fund Ordinance then what the Federation means under the Malaysia Act is immaterial for the purpose of defining 'Malaya' under the Employees Provident Fund Ordinance. Besides the meaning of 'Malaya' as defined above is consistent with the classification of the States of Malaya in part I, clause I of the Constitution which is the same as section 4 of the Malaysia Act.

The appeal must therefore be allowed with costs here as well as in the court below.

Appeal allowed.

JANGI KOR & ANOR. v. PALANISAMY

[F.C. (Barakbah L.P., Suffian & MacIntyre F.JJ.) June 13, 1968]

[K.L. — Federal Court Civil Appeal No. X47 of 1967]

Negligence — Contributory negligence — Apportionment of liability — "Just and equitable" — Civil Law Ordinance, 1956, s. 12(1).

The respondent sustained injuries as a result of a collision between a bicycle ridden by him and a lorry driven by the appellants' driver. The trial judge found the respondent 20% at fault and awarded him damages in the sum of $10,289.60. The appellants appealed on the ground that the apportionment of liability was not consistent with the high degree of negligence displayed by the respondent.

Held, dismissing the appeal: (1) in determining the amount of damages to be awarded to a claimant who is guilty of contributory negligence, the court shall assess an amount which is just and equitable having regard to the claimant's share in the responsibility of the damage;

(2) in view of the fact that the duty of care owed by the driver of a motor lorry was far more onerous than that of the cyclist it could not be said that the apportionment of liability by the trial judge was not fair and equitable.

Case referred to:—

(1) *Davies* v. *Swan Motor Co.* [1949] 2 K.B. 291 at p. 326, C.A.

FEDERAL COURT.

F. Keith Sellar for the appellants.

D. A. Devadason for the respondent.

Cur. Adv. Vult.

MacIntyre F.J.: This is an appeal against the judgment of Ismail Khan J., in a motor accident case in which he held that there was contributory negligence and awarded the plaintiff (respondent) damages in the sum of $10,289.60 for personal injuries sustained and costs of the action.

The scene of the accident was on a highway in the village of Kuala Sungai Pekan, Malacca. A bicycle ridden by the respondent who was proceeding in the direction of Batang Malacca and a motor lorry driven by the appellants' driver in the opposite direction collided, in consequence whereof, the respondent sustained injuries to his face and skull and the loss of sight of one of his eyes.

The only point taken on appeal was that the apportionment of contributory negligence in the ratio of 80 to 20, between the appellant and respondent, respectively was inconsistent with the high degree of negligence displayed by the respondent. How the problem of apportionment should be approached is evident from the provisions of section 12(1) of the Civil Law Ordinance, 1956. The relevant part of the section reads:—

"When any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of a person suffering the damage, but the damage recoverable thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

According to these provisions, the apportionment must be 'just and equitable' and what is just and equitable would depend upon the claimant's share of responsibility for the damage. In *Davies* v. *Swan Motor Company* (1) Denning L.J. commenting on section 1(1) of the Law Reform (Contributory Negligence) Act, 1945 which is the same as section 12(1) of the Civil Law Ordinance said:—

"Whilst causation is the deciding factor in determining whether there should be a reduced amount payable to the plaintiff, nevertheless, the amount of reduction is such an amount as may be found by the court to be 'just and equitable' having regard to the claimant's share in the responsibility for the damage".

It is not clear from the record, in the present case, as to how the accident happened. The appellant's version is that the accident happened when the respondent attempted to pass a stationary car to his left as his lorry was about to do the same. The learned trial judge accepted the story of a stationary car with reserve, but held that even if there was one, the accident took place after the respondent had passed it. He further found that the lorry was travelling fast on the crown of the road and that the respondent had at least a width of six feet of the road to himself to take avoiding action. To this must be added another 4′ 10″ of unmetalled track to the left of the road which according to the photographs exhibited at the trial is not on a slope as testified by the respondent. It is reasonable, therefore, to assume that the accident would not have taken place, even if the lorry was travelling at a fast speed, if both parties had kept a proper look-out. It would appear, in the first instance, as if both parties are equally responsible for the damage sustained.

However, in this case, all things are not equal. The respondent was riding a bicycle and the appellants' driver was driving a motor vehicle, which in the hands of a driver who fails to keep a proper look-out becomes a leathal weapon. The duty of care owed by the driver of a motor vehicle is far more onerous than that of a cyclist. It is, therefore, difficult to say that the apportionment by the trial judge was not fair and equitable, since, in the words of a commentator in *Mayne and McGregor* (12th Ed. 59) "figures and percentages are so much a matter of impression depending on the particular circumstances."

The appeal is dismissed with costs.

Barakbah L.P. and **Suffian F.J.** concurred.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.; D. A. Devadason.*

WEE SOON HIAN v. LAI CHING MOW

[O.C.J. (Winslow J.) June 19, 1968]
[Singapore — Suit No. 2163 of 1967]

Negligence — Taxi driver swerving sharply to the left to avoid a head-on collision with vehicle on its wrong side of road — Plea of inevitable accident.

Road Traffic — Inevitable accident — Plea of.

The plaintiff was a passenger in the taxi driven by the defendant. He alleged that he received injuries when the taxi, due to the alleged negligence of the defendant, ran off the road and overturned at or near the 5 m.s. Upper Thomson Road. He had in his report to the police said that when the taxi arrived at the 5¾ m.s. an on-coming vehicle took too much of the road and when the defendant swerved the taxi on the left to avoid colliding into the on-coming vehicle the taxi skidded into the drain on the left hand side of the road. The defendant pleaded inevitable accident. He denied the alleged or any negligence and claimed that the taxi skidded and fell into the drain when he swerved sharply to the left while negotiating a left-hand bend at a speed of about 25-30 m.p.h. in order to avoid a head-on collision with an unknown motor car which had encroached into the defendant's path from the opposite direction.

At the trial the plaintiff admitted making a report to the police but denied its contents. He stated that the report was recorded by a police officer as dictated by the defendant himself in his presence and that the report contained the defendant's version of the accident. He alleged that the defendant was driving fast while negotiating a left bend, skidded and fell into a ditch.

Held, dismissing the claim: the avoiding action taken by the defendant was one which any reasonable user of the road, confronted with the possibility of a head-on collision through no fault of his own, could well have adopted to minimise the impending disaster of having to commit virtual suicide.

[**Editorial Note:** Reference may be made to *Tan Gim Seng* v. *Gurdev Singh Gill* [1967] 2 M.L.J. 154 which was cited in argument but not referred to in the judgment.]

CIVIL SUIT.

H. E. Cashin (*Richard Ho* with him) for the plaintiff.

M. Coomaraswamy for the defendant.

Cur. Adv. Vult.

Winslow J.: This is one of those infrequent cases where I have no hesitation at all in rejecting the evidence of the plaintiff on all disputed matters. He was clearly proved to be a liar on about the most material issue in the case, to wit, whether there was an oncoming car which encroached on the defendant's side of the road in such a manner as to render the defendant's action inevitable in, what is frequently referred to as, the "agony of the moment". I have found it impossible to place any reliance in him at all. On the contrary, I accept the defendant as, substantially, an honest and reliable witness.

Taking the view which I do about their respective attitudes towards the truth, I do not propose to enter into a detailed analysis of their evidence.

I am satisfied beyond doubt that what the plaintiff himself said about the oncoming car in his original police report, to wit, that it took too much of the road and caused the defendant to swerve left to avoid it, which he denied in evidence, was a true account of what actually took place and that he has subsequently seen fit to falsify and tailor his evidence to suit the remedy he now seeks.

In my judgment, he has hopelessly failed to establish any negligence on the defendant's part. This should suffice to dismiss his claim but since